# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/940,276 | 08/27/2001 | Lon Joseph Huffman | 12587-010001 | 4550 |

26212       7590       09/26/2006

FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

| EXAMINER |
|---|
| GRAHAM, CLEMENT B |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3628 | |

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on *27 August 2001*.

2a)☐ This action is **FINAL**.    2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-39* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

## DETAILED ACTION

Claim Rejections - 35 USC § 102

1.      The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the
basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on
> sale in this country, more than one year prior to the date of application for patent in the United States.

2.      Claims 1-39, are rejected under 35 U.S.C. 102(b) as being anticipated by Barritz et al U.S.
Patent 6, 029, 145.

As per claim 1, Barritz discloses a computer-implemented method of
allocating digital content subscription revenue, the method comprising:
receiving usage information relating to usage of digital content in a digital content
aggregation;
identifying a coefficient relating to a subset of digital works in the digital content
aggregation, and generating a revenue allocation for the digital content based on the
coefficient and the usage information.(see column 2 lines 64-67 and column 3 lines 1-
67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 2, Barritz discloses wherein the coefficient is derived from a
measure of usage for digital content calculated using usage information from a plurality
of digital service  providers. .(see column 2 lines 64-67 and column 3 lines 1-67 and
column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 3, Barritz discloses wherein the coefficient comprises a preset
value corresponding to a subjective measure of marketability for the digital content.
.(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column
4 lines 36-67 and column 5-12 lines 1-67).

As per claim 4, Barritz discloses wherein the coefficient corresponds to an author
of digital content. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4
lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 5, Barritz discloses wherein identifying the coefficient comprises
retrieving      the coefficient from a contract data repository. .(see column 2 lines 64-67

and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 6, Barritz discloses wherein identifying the coefficient comprises identifying a plurality of conditioning coefficients, each comprising a preset value. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 7, Barritz discloses wherein the conditioning coefficients correspond to and author of digital content. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 8, Barritz discloses wherein one or more of the preset values indicates that a particular conditioning coefficient does not apply and is not to be used in generating the revenue allocation. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 9, Barritz discloses wherein identifying the conditioning coefficients comprises retrieving the conditioning coefficients from a central data repository to enable continuous updates to revenue allocation models.(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 10, Barritz discloses wherein generating the revenue allocation comprises:
averaging the preset values for each of a plurality of digital works in the digital content aggregation to create a composite conditioning coefficient for each 4 of the digital works; and multiplying the composite conditioning coefficient by the usage information. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 11, Barritz discloses wherein generating the revenue allocation further comprises normalizing data during multiplication to create a royalty percentage of subscription revenue for each digital work used in a given period. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 12, Barritz discloses wherein generating the revenue allocation further comprises assigning a weight to each conditioning coefficient before the averaging.

As per claim 13, Barritz discloses wherein the conditioning coefficients comprise at least one of the following:
number of top ten songs for an artist, number of platinum records for the artist; number of years the artist has been with a label, number of records produced by the artist and a popularity ranking for the artist. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 14, Barritz discloses further comprising receiving digital asset metadata from a digital asset management system to facilitate assigning of digital content aggregations and the generating of the revenue allocation.(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 15, Barritz discloses a data processing system for allocating digital content subscription revenue, the system comprising:
a processor;
an input/output system;
a database, and a revenue conditioning server configured to calculate revenue allocations for digital content in an aggregation of digital content by allocating earned revenue for the aggregation as a whole based upon actual usage of the digital content and a conditioning coefficient. (see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 16, Barritz discloses wherein the input/output system comprises a network interface, a serial port and a keyboard. (see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 17, Barritz discloses wherein the database comprises a submission database, a subscription agreement and conditioning coefficient database, and a server database. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 18, Barritz discloses 18. The data processing system of claim 17, further comprising a network server
configured to present a graphical user interface for receiving submissions and managing the subscription agreement and conditioning coefficient database. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 19, Barritz discloses wherein the revenue conditioning server comprises data exchange software capable of translating output data into a destination-specific format. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 20, Barritz discloses wherein the revenue conditioning server comprises a back-end server having document routing, mapping and transformation, transaction logging, subscriber management, security certification, and workflow orchestration elements. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 21, Barritz discloses a data processing system for allocating digital content subscription revenue, the system comprising:
means for processing data;
means for storing data on a storage medium; means for initializing the storage medium;
first means for receiving digital content usage data;
second means for receiving one or more conditioning coefficients relating to author specific valuations of digital content;
third means for receiving earned subscription revenue data.(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67) means for calculating revenue allocations per digital asset, wherein the revenue allocations vary with amount of usage of each digital asset in a given time period, and wherein the revenue allocations vary with the one or more conditioning coefficients; and means for transmitting the revenue allocations per digital asset. (see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 22, Barritz discloses wherein the means for calculating comprises a software component of a revenue conditioning server. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 23, Barritz discloses wherein the means for storing comprises 2a relational database. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 24, Barritz discloses wherein the first, second and third means for receiving comprise software modules in a computer network interface program. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 25, Barritz discloses wherein the revenue conditioning server comprises data exchange software capable of translating output data into a destinationspecific format. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 26, Barritz discloses wherein the revenue conditioning server comprises a back-end server having document routing, mapping and transformation transaction logging, subscriber management, security certification, and workflow orchestration elements. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 27, Barritz discloses further comprising:
means for receiving digital asset metadata; and
means for transmitting cost data for digital assets to a digital server provider,
wherein the cost data includes cost information per asset. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 28, Barritz discloses a machine-readable medium having stored thereon one or more sequences of
instructions for causing one or more machines to perform operations comprising:

receiving usage information relating to usage of digital content in a digital content
aggregation;

identifying a coefficient relating to a subset of digital works in the digital content
aggregation; and

generating a revenue allocation for the digital content based on the coefficient and the
usage information. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4
lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 29, Barritz discloses wherein the coefficient is derived from a measure
of usage for digital content calculated using usage information from a plurality of digital
service providers. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4
lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 30, Barritz discloses wherein the coefficient corresponds to an author of
digital content. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines
1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 31, Barritz discloses wherein the coefficient comprises a preset value
corresponding to a subjective measure of marketability for the digital 3 content. .(see
column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4
lines 36-67 and column 5-12 lines 1-67).

As per claim 32, Barritz discloses wherein identifying the coefficient
comprises retrieving the coefficient from a contract data repository. (see column 2 lines
64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and
column 5-12 lines 1-67).

As per claim 33, Barritz discloses wherein identifying the coefficient comprises
identifying a plurality of conditioning coefficients, each comprising a preset 3 value. .(see
column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4
lines 36-67 and column 5-12 lines 1-67).

As per claim 34, Barritz discloses 34. The machine-readable medium of claim 33,
wherein at least one of the preset values indicates that a particular conditioning coefficient
does not apply and is not to be used in generating the revenue allocation. (see column 2

lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 35, Barritz discloses wherein generating the revenue allocation comprises:

averaging the preset values for each of a plurality of digital works in the digital content aggregation to create a composite conditioning coefficient for each of the plurality of digital works; and

multiplying the composite conditioning coefficient by the usage information. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 36, Barritz discloses wherein generating the revenue allocation further comprises normalizing data in multiplication to create a royalty percentage of subscription revenue for each digital work used in a given period. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 37, Barritz discloses wherein generating the revenue allocation further comprises assigning a weight to each conditioning coefficient before the averaging. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 38, Barritz discloses wherein the conditioning coefficients comprise at least one of the following:

number of top ten songs for an artist.(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67)

number of platinum records for the artist;

number of years the artist has been with a label;

number of records produced by the artist; and

a popularity ranking for the artist. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

As per claim 39, Barritz discloses wherein identifying the plurality of conditioning coefficients comprises retrieving the conditioning coefficients from a central data

repository. .(see column 2 lines 64-67 and column 3 lines 1-67 and column 4 lines 1-11 and column 4 lines 36-67 and column 5-12 lines 1-67).

## Conclusion

3. The prior art of record and not relied upon is considered pertinent to Applicants disclosure.

Liddy Eder (US Patent 6, 026, 388) teaches user interface and other enhancements for natural language information retrieval system and method.

Kohorn US PATENT: 5, 508, 731) teaches generation of enlarged participatory broadcast audience.

4.      Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 703-305-1874.  The examiner can normally be reached on 7am to 5pm.
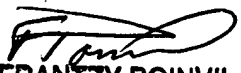
5.      Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 703-305-1874.  The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 703-308-0505. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and 703-305-0040 for After Final communications.

     Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.


CG

August 30, 2006

FRANTZY POINVIL
PRIMARY EXAMINER
Au 3628